

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014030731

ORDER DENYING STUDENT'S  
PEREMPTORY CHALLENGE

On August 1, and October 2, 2014, Administrative Law Judge Rebecca Freie held prehearing conferences in this matter. On December 4, 2014, Carly Christopher, attorney for Student, filed a notice of peremptory challenge to ALJ Freie. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034.

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subs. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

Student's peremptory challenge is not timely as ALJ Freie has already conducted two PHC's in this matter. Student's peremptory challenge is denied.

IT IS SO ORDERED.

DATE: December 4, 2014

/s/

BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings